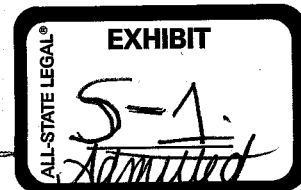


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MEMORANDUM



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TO: Docket Control

FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

2005 MAR -1 A 9:16

AZ CORP COMMISSION
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DATE: February 28, 2005

RE: IN THE MATTER OF THE APPLICATION OF DIAL-AROUND TELECOM,
INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO
PROVIDE FACILITIES-BASED LONG DISTANCE
TELECOMMUNICATIONS SERVICES (DOCKET NO. T-04240A-04-0115)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

- Facilities-based interexchange services

Staff is recommending approval of the application.

EGJ/AJL/red

Originator: Adam Lebrecht

Attachment: Original and Ten Copies

Arizona Corporation Commission
DOCKETED

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2005 JUL -6 P 2:54

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LEGAL DIV.
ARIZ. CORPORATION COMMISSION

SERVICE LIST FOR: Dial-Around Telecom, Inc.
DOCKET NO. T-04240A-04-0115

Mr. Mark Angell
Dial-Around Telecom, Inc.
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Ms. Lyn Farmer
Chief Administrative Law Judge
Arizona Corporation Commission
Hearing Division
1200 West Washington
Phoenix, Arizona 85007

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

DIAL-AROUND TELECOM, INC.

DOCKET NO. T-04240A-04-0115

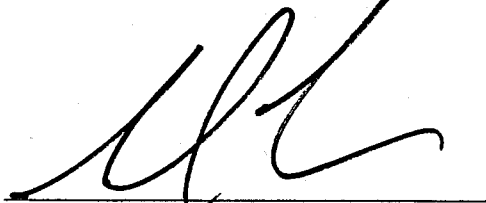
IN THE MATTER OF THE APPLICATION OF DIAL-AROUND TELECOM, INC.
FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
FACILITIES-BASED LONG DISTANCE TELECOMMUNICATIONS SERVICES

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STAFF ACKNOWLEDGMENT

The Staff Report for Dial-Around telecom, Inc., Docket No. T-04240A-04-0115, was the responsibility of the Staff member listed below. Adam Lebrecht was responsible for the review and analysis of the Applicant's application for a Certificate of Convenience and Necessity to provide facilities-based interexchange services; and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in black ink, appearing to be 'AL', is written over a horizontal line.

Adam Lebrecht
Executive Consultant I

1. INTRODUCTION

On February 18, 2004, Dial-Around Telecom, Inc. ("Dial-Around" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based interexchange telecommunications service within the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

2. THE APPLICANT'S APPLICATION FOR A CERTIFICATE OF CONVENIENCE & NECESSITY

This section of the Staff Report contains descriptions of the geographic market to be served by the Applicant, the requested services, and the Applicant's technical and financial capability to provide the requested services. In addition, this section contains the Staff evaluation of the Applicant's proposed rates and charges, and Staff's recommendation thereon.

2.1 DESCRIPTION OF THE GEOGRAPHIC MARKET TO BE SERVED

Dial-Around seeks authority to provide telecommunications services throughout the State of Arizona.

2.2 DESCRIPTION OF REQUESTED SERVICES

Dial-Around proposes to provide facilities-based interexchange service. Dial-Around indicated that its switch will be located in California. Dial-around also indicated it will utilize the Network of Broadwing Communications to transport calls to and from its California switch.

2.3 THE ORGANIZATION

Dial-Around is incorporated under the laws of the State of Florida and has authority to transact business in Arizona.

2.4 TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Dial-Around indicated that it currently has five officers with a combined experience of over 30 years in the telecommunications industry. Based on this information, Staff has concluded that the Applicant has sufficient technical and managerial capabilities to provide facilities-based interexchange service.

2.5 FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant did provide an unaudited balance sheet as of July 30, 2004. This balance sheet lists assets of \$1,566,353 and equity of \$1,561,353. The Applicant indicated that because it is still in the process of deploying its network and has not yet begun offering service in any state, it does not have an income statement. The Applicant did not provide notes related to its balance sheet.

Although the Applicant stated in its Tariff (reference Section 3.1 on page 15) that it does not collect advances, deposits and/or prepayments from its customers, Staff believes that the Applicant's customers should be protected by the procurement of a performance bond. The amount of bond coverage needed for facilities-based interexchange service is \$100,000. The bond coverage needs to increase in increments equal to 50 percent of the total minimum bond amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum bond amount. Further, measures should be taken to ensure that the Applicant will not discontinue service to its local exchange customers without first complying with Arizona Administrative Code ("AAC") R14-2-1107.

To that end, Staff recommends that the Applicant procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond amount should be increased in increments of \$50,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$10,000 of the bond amount. If the Applicant desires to discontinue the provision of service, it must file an application with the Commission pursuant to AAC R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond. Staff further recommends that proof of the above mentioned performance bond be docketed within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further order of the Commission.

If this Applicant experiences financial difficulty, there should be minimal impact to its customers because there are many companies that provide resold telecommunications services or the customers may choose a different facilities-based provider. If the long distance customer wants interexchange service from a different provider immediately, that customer is able to dial a 101XXXX ("Dial-around") access code. In addition, Dial-around customers could obtain local exchange services from

many other carriers certificated to provide such services. In the longer term, the customer may permanently switch to another company.

2.6 ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where facilities-based interexchange carriers and several resold interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both facilities-based providers and resold interexchange providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other major long distance carriers operating in Arizona. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, it did not accord that information substantial weight in its analysis.

3. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive. Staff's analysis and recommendations are discussed below.

3.1 COMPETITIVE SERVICES ANALYSIS FOR INTEREXCHANGE SERVICES

3.1.1 **A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in

this market and, as such, will have to compete with those companies in order to obtain customers.

3.1.2 The number of alternative providers of the service.

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

3.1.3 The estimated market share held by each alternative provider of the service.

The large, facilities-based interexchange carriers (AT&T, Sprint, MCI WorldCom, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

3.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

None.

3.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the ILECs offer similar intraLATA toll services.

3.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

4. COMPLAINT HISTORY

The applicant indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, formal or informal complaints. The applicant also indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years.

5. RECOMMENDATIONS

The following sections contain the Staff recommendations on the Applicant's Application for a CC&N and the Applicant's Petition for a Commission Determination that its Proposed Services Should be classified as Competitive.

5.1 RECOMMENDATIONS ON THE APPLICANT'S APPLICATION FOR A CC&N

Staff recommends that the application for a CC&N to provide intrastate telecommunications services, as listed in Section 2.2 of this report, be granted. In addition, Staff further recommends:

1. The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
2. The Applicant should be ordered to maintain its accounts and records as required by the Commission;
3. The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
4. The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
5. The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
6. The Applicant should be ordered to cooperate with Commission investigations including, but not limited to customer complaints;
7. The Applicant should be ordered to participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
8. The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's name address or telephone number;

9. The Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
10. The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;
11. In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate;
12. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant and has determined that its fair value rate base is zero. Accordingly, the Applicant's fair value rate base is too small to be useful in a fair value analysis. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to major long distance carriers operating in Arizona. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.
13. In the event the Applicant requests to discontinue and/or abandon its service area it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void without further order of the Commission and no time extensions shall be granted.

1. The Applicant shall docket a conforming tariff for its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first, and in accordance with the Decision; and
2. The Applicant shall:
 - a. procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond amount should be increased in increments of \$50,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$10,000 of the bond amount; and

- b. docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further order of the Commission.

5.2 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS
PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the interexchange service markets. Therefore, the Applicant currently has no market power in the interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

Docket No. T-240A-04-0115

Lebrecht

BALANCE SHEET

Dial-Around Telecom, Inc.
7/30/2004

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<u>Assets</u>		<u>Liabilities</u>	
Cash in Bank	\$157,423 ✓	Salaries/Wages Payable	\$5,000
Notes Receivable	0	Accounts Payable	0
Accounts Receivable	0	Notes Payable	0
Investments	0	Mortgages Payable	0
Other Current Assets	0	Contracts and Bonds Payable	0
Prepaid Expenses	\$158,000 ✓	TOTAL LIABILITIES	\$5,000 ✓
Land & Buildings	0	Common Stock	0
Office Furniture	0	Retained Earnings	0
Other Equipment	\$1,250,930 ✓	Capital	<u>\$1,561,353</u>
Other Assets	0	TOTAL LIABILITIES	
TOTAL ASSETS	<u>\$1,566,353</u>	And	
		NETWORTH	<u>\$1,566,353</u>

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FEB 09 2005

AZ Corporation Commission
Director Of Utilities

Question B-4

- 1 & 2. Arizona projected revenue and operating expenses
(See attached Projected Income and Balance Sheet)
- 3. Book Value of Arizona assets – None
- 4. There will be no assets located within the state of Arizona.
- 5. Not Applicable.